IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

1. CIVIL WRIT No. 3174 of 1995

PRAKASH CHANDRA MODI
V/S
BOARD OF REVENUE & ORS

2. CIVIL WRIT No. 3175 of 1995

PRAKASH CHANDRA MODI
V/S
BOARD OF REVENUE & ORS

3. CIVIL WRIT No. 3176 of 1995

SMT.MADHUMATI MODI
V/S
B.O.R. & ORS

Mr. RAMIT MEHTA for Mr. LR MEHTA, for the appellant / petitioners.

Mr. OP BOOB, A.G.A., for the respondent

Date of Order : 25.4.2007

HON'BLE SHRI N P GUPTA,J.

REPORTABLE

ORDER

These three petitions have been filed against the common judgment of the learned Board of Revenue, being dt. 9.5.95 Annex.7, accepting the revisions of the State Government, filed under Section 56 of the Stamp Act, 1899, hereafter to be referred to as the Act. Those revisions were filed against the order of the District Collector (Stamp) dt. 9.7.92. Since one property was sold by three separate sale deeds, in separate portions, to three

different persons, of different capacity, and therefore, identical question about leviability of the stamp duty arose, and that has been decided by the common order by the learned Board of Revenue, and therefore, all these three petitions are being decided by this common order.

The facts of the case, as appear on the record are, that one R.S. Kushwaha had obtained 99 years lease of the plot, including a house constructed thereon, from the Urban Improvement Trust, hereafter to be referred to as the UIT, under a registered lease deed, and the said tenement was transferred in three different portions, by three separate registered documents, purporting to be the document of transfer of lease hold rights. These documents were presented for registration, and Sub Registrar vide his communication dt. 10.2.92 referred the matter to the Collector, observing that the stamp duty is leviable on the market price of the property, @ Rs. 1440/- per sq. mt., and therefore, the appropriate stamp duty be determined. Thereupon notice was given to the transferees and the transferor. The transferees objected, and submitted that according to Article 63 of the Act, the stamp duty is payable on the consideration for which the lease hold rights were transferred, at the rates prescribed under Article 23, and therefore, the provisions of Section 47A are not attracted, and the market value of the property cannot be determined according to Section 47 “Kha”. Various

stipulations of the lease deed were also referred to.

The learned Collector (Stamp) found, that the stamp duty has been paid on the consideration in accordance with Article 63, and therefore, the reference made by the Sub Registrar was rejected.

It is against this order, that the revisions were filed by the State, and it was contended that the stamp duty leviable on the market value of the property is required to be calculated under Article 23, and that the UIT only assigns the land, and therefore, if only land was assigned, the stamp duty could be leviable under Article 63, but since in the present case the entire construction has also been transferred, therefore, stamp duty is leviable on the market value of the construction. It is the construction raised, which is the property of the transferor, which has been transferred, therefore, such transfer attracts stamp duty under Article 23.

The learned Board of Revenue in the order Annexure-7 found, that the assigner has transferred the construction existing on the plot, and for the purpose of ascertaining leviable stamp duty, entire document is to be read, and it is also to be looked into as to how the seller was granted the lease deed, how he raised construction, and how it has been alienated in the document in question.

Then, it was found that the plot was allotted by the UIT on 99 years lease on 6.10.63 for a consideration of Rs. 4820/- for which the transferor obtained a license from the UIT, raised construction, and after raising construction, on 2.5.1990 a lease deed was executed in favour of the seller by the UIT, and this lease deed was got registered in favour of the seller on 14.5.1990. Thereafter the seller has alienated the property to the petitioners on 9.8.1990. Then, referring to certain stipulations of the lease deed, about increase in the lease money, requirement to produce the copy of the alienation deed in the UIT, transferor being bound by the conditions of the lease, etc. it was considered that the UIT granted permission to alienate on 9.8.1990, and that after grant of 99 years lease the seller has alienated the property by registered sale deed, the land along with construction, therefore, it clearly amounts to conveyance, and is leviable to stamp duty under Article 23. It was also found, that the seller, in order to avoid stamp duty has purportedly described it to be document of assignment of lease, while as a matter of fact if it is properly read for the purpose of finding out as to what was the title of the seller, and what title is being conveyed, it would be clear, that the matter is not covered by Article 63, but is covered by Article 23, and stamp duty is leviable as leviable on conveyance. The judgments cited on behalf of the petitioners, in 1991 RRD-338 and 1972 SC-899 were also distinguished. With these findings the impugned

order has been passed.

I have heard learned counsel for the parties, and have gone through the record available.

To start with I may observe, that the learned Board of Revenue, and the learned Collector (Stamp) were right in observing, that for the purpose of deciding leviability of stamp duty, the real contents of the document have to be considered. In that background if the lease deed executed in favour of the transferor by the UIT is considered, which is available on record as Annexure-1, it would show that it clearly recites existence of constructed house on the plot in question, and also recites, that the lessee or his transferor would not use the construction for the purpose other than the purpose for which the lease deed was granted, and then it specifically stipulates, that at the expiry of the lease deed, lessee shall surrender the plot, and all existing construction thereon to the lessor. Thus it is clear, that the title was not contemplated to be vested in the lessee, lessee was undoubtedly entitled to enjoy the property during the subsistence of the lease, and it was stipulated that on the expiry of the term of the lease it was to be surrendered to the lessor. In this background a look at the document in question, which is available on record as Annexure-3, also shows that it clearly purports to be document of assignment

of lease, and clearly stipulates, that out of the total period of 99 years, a period of 26 years has already expired, and only 73 years remain, and also expressly stipulates, that after expiry of this period the entire property shall have to be surrendered to the UIT. Then, in para-11 only rights of the transferor have been transferred to the petitioners, then again in para-14 also the remainder period right has been transferred, and thus, even from the close reading of the documents, being lease deed and the deed of alienation, it is clear, that the purchaser was made aware of the limited rights available with his transferor, and those limited rights of lease only had been transferred to the purchaser, being the remainder period of lease. In this background a look at the provisions of Section 2(10) of the Act is relevant to be considered, which defines the expression "Conveyance", and reads as under:-

> "(10) "Conveyance"- "Conveyance" includes a conveyance on sale and every instrument by which property, whether movable or immovable, is transferred inter vivos and which is not otherwise specifically provided for by Schedule I (or by Schedule I-A as the case may be-Andhra Pradesh, West Bengal, Bihar, Madhya Pradesh, Orissa, Punjab and the Union Territory of Goa, Daman and Diu-See the respective Acts noticed at the head of Schedule I-A) (Schedule I-A or Schedule I-B as the case may be-Uttar Pradesh-see U.P. Act XXVII of 1952)."

A look at this definition shows, that it comprehends the conveyance on sale and every instrument by

which property, whether movable or immovable is transferred inter vivos, and which is not otherwise specifically provided for by Schedule I. Thus, the conveyance specifically provided for in Schedule I, are expressly excluded from the general definition of conveyance, as given in Section 2(10). Then, a look at Article 23 shows, that this provides the stamp duty leviable on conveyance by specifically providing it to be leviable on conveyance (as defined by section 2(10)), and not being a transfer charged or exempted under No. 62. Therefore, on its own terms, in order to attract Article 23, the transfer should amount to conveyance within the meaning of Section 2(10) only.

In this background, it is required to be noticed that the subject of lease is covered by Article 35. Obviously otherwise lease would have fallen in expression conveyance, but it is not included in view of the express exclusion clause contained in Section 2(10), and where the advalorem stamp duty is leviable in certain eventualities relating to transferor's rights, it has been expressly provided to be leviable with reference to Article 23. For example, where the lease purports to be for a term of exceeding five years and not exceeding ten years, the same duty is leviable as a conveyance (No.23) for a consideration equal to the amount or value of the average annual rent reserved. Then, in case it exceeds ten years but not exceeding twenty years, the same duty as a

conveyance (No.23) for a consideration equal to twice the amount or value of the average annual rent reserved. Then, in case the lease purports to be for a term exceeding twenty years but not exceeding thirty years, the same duty as a conveyance (No. 23) for a consideration equal to three times the amount or value of the average annual rent reserved, and if it exceeds thirty years but not exceeding one hundred years, the same duty as a conveyance (No.23) for a consideration of equal to four times the amount or value of the average annual rent reserved. In case it exceeds one hundred years or in perpetuity, then the same duty as conveyance (No.23) for a consideration equal in the case of a lease granted solely for agricultural purposes to one-tenth, and in any other case to one-sixth of the whole amount of rents, which would be paid or delivered in respect of the first fifty years of the lease. Thus, where Article 23 is intended to be made applicable, it is so provided by incorporation. In this sequence I may now come to Article 63, which reads as under:-

"Art.63. TRANSFER OF LEASE by way of assignment and not by way of under-lease.	The same duty as a Conveyance (No.23) for a consideration [Tamil Nadu and Pondicherry market value] equal to the amount of the consideration for the transfer.
Exemption. Transfer of any lease exempt from duty."	

Thus, a look at this Article 63 shows, that it

applies to cases of transfer of lease by way of assignment, which is otherwise than by a under-lease, and for that also the stamp duty is leviable as a conveyance (No. 23) for a consideration equal to the amount of the consideration for the transfer. Thus, in case of transfer by way of assignment, the stamp duty is leviable as conveyance under Article 23, but then the relevant amount on which the stamp duty is to be calculated is, the amount of consideration for that transfer. This Article or any other Article in my view do not provide for leviability of stamp duty in case of transfer of lease on the prevalent market price under Article 23 on the prevalent market price of the property covered by the transfer.

To appropriately appreciate and comprehend the question I may also gainfully notice, that by Rajasthan Taxation Laws (Second Amendment) Act, 1976, as substituted by the Act of 1997 in Rajasthan, this Article 63 has been amended, to the effect, that in case of transfer of lease, by way of assignment, the stamp duty provided is, as on a conveyance (No.23), for a consideration equal to the amount of the market value of the property. This amendment is made in the year 1997, and is not retrospective, therefore, has no application in the case in hand, but this I am referring, only for the purpose of understanding, that it is since 1997 onwards only, that in such cases of transfer of assignment of lease holder rights, the stamp duty is

leviable on the consideration equal to the market value of the property, and prior to that, it is to be leviable on the amount equal to consideration for the transfer. A combined reading of amended and un-amended provision does leave no manner of doubt, that the transaction in question is covered by Article 63 only, and the stamp duty is to be paid on the document in accordance with the provisions of Article 63, as it existed at the relevant time, and according to Article 63 as it existed, at the time on the document in question the stamp duty was leviable on the amount of consideration for the transfer.

It is not in dispute that the stamp duty paid on the document Annexure-3 is not deficit, if considered from the standpoint of the leviability of the stamp duty on the amount of consideration of transfer. This being the position, in my view, the impugned order of the Board of Revenue Annexure-7 dt. 19.5.1995 cannot be sustained, and is liable to be set aside.

Accordingly, the writ petitions are allowed. The impugned order Annexure-7 is set aside, and that of the Collector (Stamps) dt. 9.7.1992 is restored. The parties shall bear their own costs.

(N P GUPTA),J.

/Sushil/